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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,185	08/27/2003	James David Main II	50411-00001	5248
25231	7590	08/08/2008	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP			NGUYEN, MINH DIEU T	
8055 East Tufts Avenue				
Suite 450			ART UNIT	PAPER NUMBER
Denver, CO 80237			2137	
			MAIL DATE	DELIVERY MODE
			08/08/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,185	MAIN, JAMES DAVID	
	<b>Examiner</b>	<b>Art Unit</b>	
	MINH DIEU NGUYEN	2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 June 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8, 14, 16-27, 32-48, 54-66 and 123-125 is/are pending in the application.
- 4a) Of the above claim(s) 9-13, 15, 28-31, 49-53 and 67-122 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 14, 16-27, 32-48 and 54-66 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 123-125 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the communication dated 6/30/2008 with the election of group I, species 1 including claims 1-8, 14, 16-27, 32-48, 54-66, the cancellations of claims 9-13, 15, 28-31, 49-53 and 67-122 and the addition of claims 123-125.
2. Claims 1-8, 14, 16-27, 32-48, 54-66 are pending.

### ***Claim Objections***

3. The claims objections have been withdrawn based on the filed amendment.

### ***Response to Arguments***

4. Applicant's arguments have been fully considered but they are not persuasive. The applicant argues that Eftis does not disclose opening the firewall, maintaining the firewall opened and sending a successive communication before the first set period of time expires where the successive communication causes the firewall to leave the hole open for a second set period of time. The examiner respectfully disagrees, Eftis discloses a backend server 10 is networked to one or more session manager servers 12, the session manager servers are connected to the Internet through a firewall where one or more client devices 18 are also connected to the Internet (Eftis, Fig. 1), the firewall provides security for preventing unauthorized access to the servers over the network. The chat server maintains the online presence of client devices through an

HTTP connection between the client device and the chat server. The chat server is also used to send messages to and receive messages from the client device through the HTTP connection (i.e. once the connection is established through a firewall, the firewall is open, Eftis: col. 7, lines 21-30; col. 10, lines 62-67). As such, Eftis discloses the firewall is opened and maintains opened using HTTP connection. Eftis further discloses multiple HTTP requests can be used to maintain presence by having the applet make periodic HTTP requests to the server to establish and maintain the on-line presence of the user (i.e. in order to maintain connection to have firewall stay open, the user makes periodic requests (i.e. successive communication from user before the period expires; Eftis: col. 9, lines 31-37; col. 11, lines 28)).

#### ***Election/Restrictions***

5. Newly submitted claims 123-125 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the invention originally claimed and the newly submitted claims are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination (i.e. newly submitted claims) has separate utility such as receiving, at the mobile device, push data from the asset server transmitted to said mobile device during said time period when said hole in said firewall remains open, said push data being transmitted to

said mobile device free from a specific request from said mobile device. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 123-125 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 14, 16, 25-26, 32, 37-45, 54 and 60-61 are rejected under 35 U.S.C. 102(e) as being anticipated by Eftis et al. (7,171,473).

a) As to claim 1, Eftis discloses a method to maintain a communication connection through a firewall in a network used for pushing information to and receiving information from a mobile device (Eftis: col. 4, lines 1-4) comprising: sending a first heartbeat signal between the mobile device and an asset server (Eftis: col. 9, lines 1-3); receiving the first heartbeat signal at the firewall (Eftis: Fig. 1, element 16); opening a

hole in the firewall to allow communication between the mobile device and the asset server (Eftis: col. 10, lines 62-67); holding the hole open for a first set period of time (Eftis: col. 9, lines 21-25; col. 10, lines 40-44); and sending a successive communication before the first set period of time expires, wherein the successive communication causes the firewall to leave the hole open for a second set period of time (Eftis: col. 11, lines 16-28).

b) As to claims 2 and 41, Eftis discloses the method of claim 1, wherein the network is a wireless network (i.e. wireless network is inherently understood since it relates to wireless phone, Eftis: Fig. 1, element 18).

c) As to claims 3 and 42, Eftis discloses the method of claim 1, wherein the network is a packet-switched network (i.e. the Internet, Eftis: col. 6, lines 17-20).

d) As to claims 4 and 45, Eftis discloses the method of claim 1, wherein the successive communication is information the mobile device sends to the asset server through the hole (Eftis: col. 11, lines 18-19).

e) As to claims 5, 16, 43 and 44, Eftis discloses the method of claim 5, wherein the mobile device is part of an asset in an asset tracking system (Eftis: col. 12, lines 53-58).

f) As to claims 14 and 54, Eftis discloses the method of claim 1, wherein the successive communication is information the mobile device receives from the asset server through the hole (Eftis: col. 7, lines 21-26).

g) As to claims 25-26 and 60-61, Eftis discloses the method of claim 1, wherein the successive communication is a successive heartbeat and the heartbeat

signal is specific to the mobile device that originates the heartbeat (Eftis: col. 11, lines 16-34).

- h) As to claims 32 and 40, Eftis discloses the method of claim 1, wherein the mobile device is a cellular device (Eftis: Fig. 1, element 18).
- i) As to claim 37, Eftis discloses the method of claim 1, wherein a first heartbeat includes a dynamic IP address for the mobile device (Eftis: col. 3, lines 37-46; col. 9, lines 1-19).
- j) As to claim 38, Eftis discloses the method of claim 1, wherein the asset server record the dynamic IP address to communicate with the mobile device in the future (Eftis: col. 6, lines 61-63).
- k) As to claim 39, this claim is directed to a hardware implementation of the method of claim 1 and is rejected by a similar rationale applied against claim 1.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-8, 17-24, 33-36, 46-48, 55-59 and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eftis et al. (7,171,473) in view of Fuchs et al. (6,453,237).

a) As to claims 6-8 and 46-48, Eftis discloses the method of claim 5, however it is silent on the capability of having the sent information pertains to an asset position, wherein the asset position is information about one of GPS coordinates, directions, speed, LORAN position or street address, and wherein the GPS coordinates are provided by a GPS receiver communicatively coupled to the mobile device.

Fuchs is relied on for the teaching of having the sent information pertains to an asset position, wherein the asset position is information about one of GPS coordinates, directions, speed, LORAN position or street address, and wherein the GPS coordinates are provided by a GPS receiver communicatively coupled to the mobile device (Fuchs: col. 3, lines 61-63; col. 4, lines 60-63; col. 5, lines 30-32).

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the use of having the sent information pertains to an asset position, wherein the asset position is information about one of GPS coordinates, directions, speed, LORAN position or street address, and wherein the GPS coordinates are provided by a GPS receiver communicatively coupled to the mobile device in the system of Eftis, as Fuchs teaches, so as to effectively locate assets in the broad coverage area (Fuchs: col. 1, lines 14-19).

b) As to claims 17 and 55, Eftis discloses the method of claim 16, however it is silent on the capability of having the received information pertains to at least one other asset in the asset tracking system.

Fuchs is relied on for the teaching of having the received information pertains to at least one other asset in the asset tracking system (i.e. tracking children, the elderly, etc., Fuchs: col .1, lines 21-25).

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the use of having the received information pertains to at least one other asset in the asset tracking system in the system of Eftis, as Fuchs teaches, so as to locate objects over a large geographic region (Fuchs: col. 1, lines 14-19).

c) As to claims 18-19 and 56-57, Fuchs discloses the received information pertains to a position to which the asset should proceed and wherein the received information includes real-time information (i.e. real-time directions Fuchs: col. 22, lines 6-9).

d) As to claims 20-24 and 58-59, Fuchs discloses the real-time information is about a status of a location at the position; the real-time information includes one of blueprints, occupancy, items stored at the location, a history of the location, or a history of occupants at the location; the real-time information is about one of a traffic condition, a light signal, a traffic accident, a best route, or a parking condition; the real-time information is imagery of the position and the imagery includes satellite imagery (Fuchs: col. 24, line 53 to col. 25, line 2).

e) As to claims 33-36 and 63-66, Fuchs discloses the cellular device sends and receives digital signal, the cellular device includes a digital modem to send data to and receive data from the cellular network (Fuchs: col. 8, lines 27-29; col. 23, lines 16-18; col. 21, line 65 to col. 22, line 4), the cellular device multiplexes a plurality of data

streams into an out-going data stream and the plurality of data streams includes one of voice data, asset position data, asset status data, the heartbeat or mobile device identifier (Fuchs: col. 8, lines 10-12; col. 6, lines 48-51).

10. Claims 27 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eftis et al. (7,171,473) in view of Inoue (5,805,999).

Eftis discloses the method of claim 26, however it is silent on the capability of having the digital signal includes at least one bit that identifies the mobile device.

Inoue is relied on for the teaching of having the digital signal includes at least one bit that identifies the mobile device (Inoue: Fig. 2B, element 224).

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the use of having the digital signal includes at least one bit that identifies the mobile device in the system of Eftis, as Inoue teaches, so as to easily to identify and locate the called device.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Dieu Nguyen whose telephone number is 571-272-3873.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on 571-272-3865. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Minh Dieu Nguyen/  
Primary Examiner, Art Unit 2137

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